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| APPLICATION NO.                | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------|-------------|----------------------|---------------------|------------------|
| 10/781,627                     | 02/20/2004  | Volker Braun         | Q79775              | 4136             |
| 23373                          | 7590        | 05/17/2007           | EXAMINER            |                  |
| SUGHRUE MION, PLLC             |             |                      | PEACHES, RANDY      |                  |
| 2100 PENNSYLVANIA AVENUE, N.W. |             |                      |                     |                  |
| SUITE 800                      |             |                      | ART UNIT            | PAPER NUMBER     |
| WASHINGTON, DC 20037           |             |                      | 2617                |                  |
| MAIL DATE                      |             | DELIVERY MODE        |                     |                  |
| 05/17/2007                     |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                 |              |
|------------------------------|-----------------|--------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|                              | 10/781,627      | BRAUN ET AL. |
|                              | Examiner        | Art Unit     |
|                              | Randy Peaches   | 2617         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 27 February 2007.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 6-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 6-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. ***Claims 1-10*** are rejected under 35 U.S.C. 102(e) as being anticipated by Hamabe et al. (European Publication Number EP 1 237 296 A2), hereinafter Hamabe et al.

Regarding ***claims 1 and 8-10***, Hamabe et al. discloses a method of transmitting data over a dedicated physical channel (DPCH) and a High Speed Packet Data Shared Channel (HS-PDSCH), which reads on claimed "first and second channels," the said DPCH having a constant (QoS), which includes data rate, which reads on claimed "predefined grade of service,"(see column 2 lines 10-16) and a said HS-PDSCH having a variable grade of service (see column 2 lines 31-36), the method comprising:

- determining a maximum load of a transmit power amplifier. See column 4 lines 3-8 and FIGURE 3;
- determining a share of the load, which is due to the transmission over the said HS-PDSCH. See column 4 lines 3-17,

- determining a share of the load, which is due to the transmission over the first channels by subtracting the share of the load, which is due to the transmission over the HS-PDSCH from the said maximum load of the PDSCH. See column 4 lines 4-17, column 4 lines 18-25 and column 7 lines 15-23;
- determining a difference between a maximum load and the share, which is due to the transmission of the DPCH. See column 4 lines 9-17;
- controlling the transmission over the second channels on the basis of the difference. See column 4 lines 9-17.

Regarding **claim 2**, according to **claim 1**, Hamabe et al. further discloses wherein the said DPCH are dedicated channels and the said HS-PDSCH are shared channels. See column 3 lines 52-58.

Regarding **claim 3**, according to **claim 1**, Hamabe et al. further discloses whereby the load is determined by means of a moving average of the load being required to transmit the data over the first and second channels by means of the transmit power amplifier. See column 6 lines 55-58 and column 7 lines 1-14.

Regarding **claim 4**, according to **claim 1**, Hamabe et al. further discloses wherein the maximum load being a mean power amplitude (see FIGURE 3), whereby the mean power amplitude is a safety margin below maximum peak power amplitude. See FIGURE 3.

Regarding **claim 6**, according to **claim 1**, Hamabe et al. further discloses wherein the control is performed by a controller (14) for the said HS-PDSCH. See column 4 lines 45-58, column 7 lines 54-58 and column 8 lines 1-15.

Regarding **claim 7**, according to **claim 1**, Hamabe et al. further discloses wherein the transmission of data over the said DPCH being scheduled by a scheduler for the said DPCH independently from the scheduler for the said HS-PDSCH. See column 8 lines 1-15.

#### ***Response to Arguments***

Applicant's arguments filed 2/27/2007 have been fully considered but they are not persuasive.

Regarding **claims 1 and 8-10**, the Applicant details that the cited prior art fails to render sufficient support as to the claim language which states: determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier. The Examiner respectfully maintains that Hamabe does indeed disclose determining the transmission power for the individual channel by subtracting the transmission power for the shared channel from the total transmission power. In column 4 lines 18-25, Hambe teaches that in order to determine the transmission power for the shared channels, a method is performed by subtracting

the upper limit power (share load) from the total power (actual power). Therefore, the Examiner maintains that cited prior art reads on the Applicant's claimed language.

***Claims 1-4 and 6-10*** stand rejected.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy Peaches whose telephone number is (571) 272-7914. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph H. Feild can be reached on (571) 272-4090. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randy Peaches  
RP

  
JOSEPH FEILD  
SUPERVISORY PATENT EXAMINER